

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.110/2018

APPELLANTS : 1) Deepak Devidas Jaiswal
(Ori. Appellant) Age 46 years, Occ. - Agriculture
On R.A.
2) Ashok Devidas Jaiswal

Both R/o Ghuikhed, Tq. Chandur Railway,
Dist. Amravati.

...VERSUS...

RESPONDENTS : 1) The Executive Engineer
(Ori. Respondent) Bembla Project Division,
On R.A. Yavatmal, Dist. Yavatmal.

2) Special Land Acquisition Officer,
Upper Wardha Project No.4, Amravati.

3) State of Maharashtra through
Collector Amravati, Dist. Amravati.

Shri A.B. Nakshane, Advocate for appellants
Shri M.A. Kadu, Advocate for respondent no.1
Mrs. M.H. Deshmukh, AGP for respondent nos.2 and 3

CORAM : AVINASH G. GHAROTE, J.

DATE : 29/11/2022

ORAL JUDGMENT

1. Heard Shri A.B. Nakshane, learned counsel for the appellants, Shri M.A. Kadu, learned counsel for the respondent no.1

and Mrs. M.H. Deshmukh, learned Assistant Government Pleader for the respondent nos.2 and 3.

2. The factual position in the present first appeal is as under : -

Bembla River Project, District Yavatmal			
Date of Notification under Section 4 of the Land Acquisition Act.			26/10/2005
Property details	Area of property	LAO Award Dated 06/09/2008	Ref. Court Award Dated 27/03/2015
Plot No: 564/1 Village: Ghuikhed Tahsil Chandur Railway District : Amravati	Plot Area : 65.00 Sq.mtr.	Rs.140/- per Sq.mt	Rs.500 per Sq.mtr.
	Construction: 65.00 Sq.mtr.	Rs.7198/- per Sq. mtr.	Rs.9717/- per Sq. mtr.

3. The appeal challenges the judgment of the Reference Court dated 27/03/2015, whereby the learned Reference Court has enhanced the compensation for the open plot to Rs.500/-per sq.mtr. and has granted compensation for the constructed area at the rate of Rs.9717/- per sq.mtr., in respect of plot No.564/1, as detailed above.

4. In ***First Appeal No.1378/2018 (Sharad Gangadhar Gulhane Vs. The State of Maharashtra through the Collector, Camp,***

Amravati and others) and First Appeal No.389/2018 (Lilabai Omkarrao Giri and others Vs. The State of Maharashtra through the Collector, Camp, Amravati and others) decided on 06/09/2021, this Court, while considering the claim for enhancement of compensation in respect of plots at village Ghuikhed had decided the compensation to Rs.575/- per sq.mtr. The fixing of the said rate of open plot was based upon the fact that the said village is located on the border of the State Highway i.e. Aurangabad - Nagpur Highway, about half kilometer from the highway there is an approach road to the village and in view of the sale deed dated 30/03/1995 of the same village, the compensation was enhanced considering the escalation/increase per year for a period of 10½ years and the aforesaid rate of Rs.575/- per sq.mtr. for open plot has been fixed.

5. In the instant matter, no material, has been brought to my notice existing on record, for me to take a different view than what has been already taken by this Court in *First Appeal No.1378/2018 (Sharad Gangadhar Gulhane Vs. The State of Maharashtra through the Collector, Camp, Amravati and others)*.

6. The evidence of Shri Chandrashekhar Wankhede, the valuer, who claims the market rate to be Rs.1000/- per sq.mtr. for

open plot, a perusal whereof would demonstrate that he has not enquired about any sale instance, from the same village, or from the neighbouring village, in order to arrive at the rate as been quoted in his report. He further, admits in his cross-examination that for the purpose of determining the value of the plot, the value of the neighbouring properties, has to be ascertained which has not been done by him. Neither he has enquired from the Gram Pachayat, when the construction was made, apart from which, there is nothing in his report or on record to indicate the nature of the construction, considering which, there is no reason, to accept the value of construction pegged by him or any reason whatsoever for the rate accepted by the learned Reference Court insofar as construction is concerned, to be interfered.

7. That being the position, in view of the rate of open plot in village Ghuikhed, having already been determined by this Court at Rs.575/- per sq.mtr. the appellant, would only be entitled to that benefit and nothing else. Though the rate of construction as awarded is clearly exorbitant, however, since there is no appeal or cross-objection by the acquiring body, the same cannot be gone into in this appeal, which is by the claimant.

8. In the result, the first appeal is partly allowed and the impugned judgment under reference is modified by enhancing the rate of open land as granted by the learned Reference Court at Rs.500/- per sq.mtr. to Rs.575/- per sq.mtr, as held in ***Sharad Gangadhar Gulhane*** (supra). Rest of the judgment of the learned Reference Court is maintained.

9. The difference in the amount of compensation, and all ancillary benefits arising therefrom as per the provisions of the Land Acquisition Act, as applicable thereto be calculated and deposited in the Reference Court within a period of eight weeks from today. The difference in court fee be deposited in this Court. All pending civil applications, if any, shall stand disposed of. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar